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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

McLeodUSA Telecommunications)
Services, Inc.)

CC Docket No. 98-84

Petition for Preemption of Nebraska)
Public Service Commission Decision)
Permitting Withdrawal of Centrex Plus)
Service by USWest Communications,)
Inc.)

**COMMENTS OF THE
COMPETITION POLICY INSTITUTE**

The Competition Policy Institute (CPI) hereby responds to the Public Notice of September 3, 1998¹ seeking comment on USWest's August 21 *ex parte* submission that included a recent decision of the Supreme Court of Nebraska concerning the availability of Centrex service in that state. CPI previously filed reply comments in this proceeding. Rather than repeat our arguments in those comments, the following comments respond directly to the *ex parte* submissions of USWest and McLeodUSA.²

USWest maintains that the decision of the Nebraska Supreme Court renders the McLeodUSA Petition "nugatory". USWest asks the FCC to dismiss the McLeodUSA Petition because the Nebraska Supreme Court found that McLeodUSA did not have standing to pursue its appeal in Nebraska state court under Nebraska state law. USWest maintains that FCC

¹ Public Notice, Docket No. 98-84, DA 98-1792. The Public Notice requested comments by September 24th and reply comments by October 5th.

² McLeodUSA submitted *ex parte* filings on August 24th and August 27th.

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“consider[ation]” of the McLeodUSA Petition would require the FCC to “impose new standing rules on the Nebraska Supreme Court” and that it would be “presumptuous of the FCC to attempt to dictate procedural rules to the highest judicial authority in a state.” (USWest *ex parte* submission, p.2)

The FCC should not entertain USWest’s circumlocution. McLeodUSA’s *ex parte* submission of August 27th accurately describes the difference between McLeodUSA’s FCC petition (concerning the application of section 253 of federal law) and its pursuit of relief before the Nebraska state courts (applying Nebraska state law). The Nebraska Supreme Court decision does not prevent the FCC from acting favorably on McLeodUSA’s petition. In fact, the Nebraska Supreme Court decision makes an FCC ruling even more necessary, as it now appears to be impossible for McLeodUSA to find relief before the state courts.

The USWest *ex parte* submission raises the general issue of “standing” requirements and the enforcement of section 253. CPI opposes the adoption of such requirements for petitions to preempt under section 253.

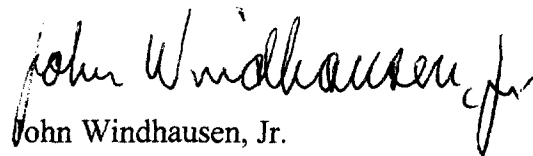
A requirement that petitioners must be directly harmed by the offending statute or ordinance could defeat the purposes of section 253. Such a requirement would make it impossible for entities that do not provide competitive telecommunications services — including consumer groups, future competitors, and industry trade organizations — to file petitions to preempt provisions that violate section 253. A standing requirement would defeat the fundamental purpose of the Telecommunications Act — the promotion of local telephone competition.

Since passage of the Telecommunications Act of 1996, the FCC has considered several petitions either for declaratory rulings or for preemption under section 253 that were filed by

state PUCs, trade associations, and other non-carrier entities.³ In none of these cases has the FCC adopted a standing requirement, and for good reason. Adoption of a "standing" requirement would make it more difficult for parties to bring section 253 complaints to the Commission's attention. There is no evidence in the legislative history that Congress intended to limit the operation of this critical section of the law. Further, there is no evidence that non-carrier entities are abusing the Commission's process by submitting groundless preemption petitions.

CPI thus urges the FCC not to foreclose the ability of state officials, consumer organizations, trade associations, and other non-carrier entities to seek preemption of state or local laws that violate section 253 by the adoption of strict "standing" requirements. CPI also urges the FCC to consider favorably the McLeodUSA petition for preemption, especially in view of the Nebraska Supreme Court decision.

Respectfully Submitted,


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³ To list a couple of examples, in May, 1996, the Public Utilities Commission of Texas filed a Petition for Declaratory Ruling concerning a recently-enacted Texas statute. Following that filing, several parties, including CPI, filed separate petitions to preempt the state statute under section 253. The FCC's order in that case did not impose a "standing" requirement on parties to that case. See, "Texas Preemption Order", CCB Pol 96-13, 13 FCC Rcd 3460 (1997). (In fact, the FCC preempted a decision barring the resale of Centrex service in Texas -- an issue that was raised only by CPI.) Similarly, earlier this year, the Minnesota Department of Transportation filed a Petition for Declaratory Ruling asking that the FCC find that its decision to award a single contract for the construction of a fiber optic cable along a state-owned right-of-way was consistent with section 253. Following the filing of that Petition, USTA, OPASTCO, the Western Rural Telephone Association, and CPI (none of whom themselves provide competitive telephone service) filed a joint Opposition and request to preempt the Minnesota contract. See, CC Docket No. 98-1, March 9, 1998. The FCC has not yet ruled on this issue.

Certificate of Service

I, Bridget J. Szymanski, hereby certify that on this twenty-fourth day of September, 1998, copies of the foregoing Comments of the Competition Policy Institute were served by first-class, United States mail, postage prepaid, upon each of the following:


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